

CHAPTER 2

ELECTIONS AND ELECTION CHANGES

90201. Election

a. A member who retired before 21 Sep 1972, had until 20 Mar 1974, to elect to participate in the plan. If the member was recalled to active duty before 20 Mar 1974, and not returned to the retirement list until after 20 Mar 1974, an election made at the end of the period of extended active duty may be considered valid. A member who retires on or after 21 Sep 1972, has automatic participation at the maximum level, unless he/she elects otherwise before retirement or is ordered to participate in the plan by a court order. If, on 21 Sep 1973 (pre-21 Sep 1972 retiree), or on date of retirement (post-21 Sep 1972 retiree), the member has no spouse or dependent children and later marries or acquires dependent children, the member may participate in the plan. This election must be received by the Secretary concerned within 1 year of the marriage date or acquisition of the children. A member retiring between 21 Sep 1972 and 20 Mar 1973, had a "grace period" for making the final decision concerning this coverage. This member had 180 calendar days after the retirement date to change the automatic full coverage given at retirement if no election otherwise had been made. An election made before 21 Sep 1972, was null and void as of 21 Sep 1972, if the member retired on or after 21 Sep 1972.

b. Public Law 97-35 gives certain eligible members an opportunity to elect or to change SBP coverage from 1 Oct 1981 through 30 Sep 1982. See paragraph 90209.

c. Public Law 98-94 gives certain participating members a limited opportunity from 24 Sep 1983 to 23 Sep 1984, to change SBP coverage from spouse or spouse and child(ren) to coverage for former spouse.

d. Public Law 101-189, as amended, gives certain eligible members an opportunity to elect or change SBP coverage from 1 Apr 1992 through, 31 Mar 1993. It also allows members who provide spouse or former spouse coverage at the maximum level a chance to elect Supplemental SBP (SSBP).

90202. Election Option

a. **Base Amount.** A member who participates in the SBP must elect a base amount or maximum coverage or reduced coverage. A member must choose maximum coverage if

electing SSBP. The base amount at any level is adjusted with each cost-of-living increase after retirement. See paragraph 90801.

b. **Coverage.** Coverage may be provided for:

- (1) Spouse and/or children;
- (2) Former spouse or former spouse and children; or
- (3) Natural person with an insurable interest (at maximum level of coverage only).

c. **Supplemental SBP Coverage.** A member who elects SBP coverage for spouse or former spouse at the maximum level may elect a supplemental spouse annuity for that beneficiary. A member elects a monthly SSBP annuity payable to the beneficiary in increments of 5, 10, 15, or 20 percent of the base amount. A member may not elect SSBP if the annuity of the spouse or former spouse will be computed under the social security offset method (Title 10, U.S.C., section 1451(e)). However, the member may elect SSBP as any other member if the right to have annuity computed under the social security offset method is waived.

50203. Election Data

DD Form 1881, SBP Election Certificate by Existing Retiree; DD Form 1882, SBP Election Change; DD Form 1883, SBP Election Certificate; and DD Form 2618, SBP Open Enrollment Election, when available, are recommended for use by the member. Elections in writing, signed by the member, which contain information necessary for establishing or declining coverage are acceptable; however, spousal concurrence of certain elections is required beginning 1 Mar 1986. A member who anticipates becoming an SBP participant with maximum coverage for spouse or former spouse, must elect SSBP before the day on which the member first becomes a participant in SBP. If upon becoming a participant in SBP, the member is not providing an annuity for spouse or former spouse at the maximum level, any SSBP election shall be void. A former spouse election by the member will be accompanied by a written statement setting forth whether the election is being made pursuant to the requirements of a court order or whether the election is being made pursuant to a written agreement previously entered into voluntarily by the member as a part of or incident to a proceeding of divorce, dissolution or annulment and, if so,

whether such voluntary agreement has been incorporated in, or ratified or approved by a court order. On a deemed former spouse election, the Secretary concerned receives a written request, in a manner prescribed by the Secretary, and a copy of the court order, regular on its face, which requires such election or incorporates, ratifies, or approves the written agreement of such person, or receives a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable state law.

a. Identification. Member's name, social security number, birth date, and date of retirement.

b. Base Amount. The election form must indicate full coverage, in lieu of dollar amount, when maximum coverage is elected. When a reduced base amount is elected, the dollar amount must be indicated on the election form. The reduced base amount must not be less than \$300. When retired pay is less than \$300, the election form must indicate full coverage.

c. Beneficiary. Show the name, birthdate, and social security number for each beneficiary named.

(1) If coverage includes spouse, or former spouse, the member must furnish the date of marriage and divorce (if applicable).

(2) When the beneficiary is a natural person with an insurable interest, the address and relationship must be shown. For the natural person with an insurable interest, the member must provide a signed statement to show proof of financial benefit if the person designated is more distantly related than cousin.

(3) If the beneficiary designation is for a former spouse, the member must complete a statement signed by the member and the former spouse setting forth whether the election is being made pursuant to a written agreement previously entered into voluntarily by the member as a part of or incident to a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

d. Signature. The member must sign and date the election. Two disinterested persons must witness a document signed by an "X".

NOTE: An election made on behalf of the member through a power of attorney is not valid. Such an election is not binding and is without force or effect of law.

e. Spousal Concurrence. Effective 1 Mar 1986, a married member is enrolled with spouse

coverage on full retired pay at the time of retirement unless that spouse has concurred in writing to another election requested by the member. When the spouse's concurrence is required, the signature indicating concurrence must be corroborated by one or more witnesses. The spouse's concurrence with, or request for, an election other than that requested by the member shall be disregarded. If all requirements for an election needing the spouse's concurrence have not been satisfied prior to retirement, for whatever reason, full spouse costs and coverage will be implemented, regardless of any request by the member to do otherwise. In such cases, when the member has requested any form of child coverage, full spouse and child coverage will be implemented. Any change in SBP election subsequent to retirement will be done through an administrative correction of records. The requirements for spousal concurrence do not affect any obligation or right of the member to provide coverage for a former spouse. If former spouse coverage is elected or deemed, the spouse's concurrence is not required; however, the spouse will be notified of that election as previously required when spouse coverage was declined. Spousal concurrence is not required in any case if the member establishes to the satisfaction of the Secretary concerned that either the spouse's whereabouts cannot be determined or that, due to exceptional circumstances, the requirement of the member to seek the spouse's concurrence would be otherwise inappropriate. Such exceptional circumstances will be evaluated on a case-by-case basis.

f. SSBP Percentage of Annuity Coverage

A member who elects spouse or former spouse coverage at the maximum level may provide an additional percentage of the base amount in increments of 5, 10, 15, or 20 percent. A member may not make an SSBP election if the spouse or former spouse is entitled to annuity computed under the social security offset method (Title 10, U.S.C., section 1451(e)). However, the member may elect SSBP, if such member waives the right to have annuity computed under the social security offset method.

90204. Irrevocable Elections, Corrections, and Discontinued Participation

a. An election by a pre-21 Sep 1972 retiree on the basis of adequate information concerning the plan or an election by a post-21 Sep 1972 retiree (unless revoked or changed before the first day of retirement) is irrevocable, except under the following circumstances:

(1) Member discontinues participation as a totally disabled member under paragraph 90208.

(2) The mentally incapacitated member is later determined to be mentally competent and revokes or changes the SBP election within 180 days after such determination of judgment.

(3) Member who became an SBP participant between 19 Oct 1984 and 8 Nov 1985 elects to withdraw from SBP before 8 Nov 1986 under section 711 of Public Law 99-145.

(4) A member retired 1 Mar 1986, or later who elected less than maximum SBP coverage without the spouse's concurrence and it is later determined by the Secretary concerned that the spouse's concurrence in such election was appropriate.

(5) The Secretary concerned revokes an election when necessary to correct an administrative error. Revocation or correction based on administrative error is a Secretarial prerogative and, except when procured by fraud, is final and conclusive on all officers of the United States.

b. The SBP election maybe changed as set out in paragraphs 90207 and 90209.

90205. Election Coverage

a. Spouse and/or Children

(1) A member may elect coverage at the maximum level or at a reduced amount, with spouse's concurrence, if required, for

(a) An eligible spouse only.

(b) An eligible spouse and dependent children.

(c) Dependent children only.

A member with spouse coverage at the maximum level may also elect SSBP coverage.

(2) A member who retires on or after 21 Sep 1972 is automatically covered at the maximum level for spouse and/or dependent children unless the member elects not to participate or to participate at a reduced level before the first day of eligibility to retired pay with the concurrence of the member's spouse, if required. See paragraph 90205a(4) below.

(3) A member with an eligible spouse and dependent children on 21 Sep 1973 (pre-21 Sep 1972 retiree) or on date of retirement (post-21 Sep 1972 retiree) who:

(a) Declines coverage is prohibited from electing into the plan, except under paragraph 90209;

(b) Refuses coverage for an eligible

spouse and elects coverage for children only, is prohibited from electing spouse coverage at a later date, except under paragraph 90209;

(c) Refuses coverage for the dependent children and elects coverage for spouse only is barred from electing child coverage at a later date.

(4) A married member who is eligible to provide SBP may not without the concurrence of the member's spouse elect: not to participate in SBP, to provide an annuity for the member's spouse at less than maximum level, or to provide an annuity for a dependent child but not for spouse unless the member establishes to the satisfaction of the Secretary concerned:

(a) That the spouse's whereabouts cannot be determined; or

(b) That, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

(5) A member with dependent children, who was unmarried on 21 Sep 1973 (pre-21 Sep 1972 retiree) or on date of retirement (post-21 Sep 1972 retiree), may elect spouse coverage upon marriage regardless of whether coverage was elected for the dependent children. A member who is going to elect SBP for spouse at the maximum level may simultaneously elect SSBP coverage.

(6) A member with an eligible spouse who did not have dependent children on 22 Sep 1973 (pre-21 Sep 1972 retiree) or on date of retirement (post-21 Sep 1972 retiree) may later elect coverage for dependent children.

(7) If a member elects to provide an SBP annuity for a former spouse or a former spouse and child and the member is married, the member's spouse shall be notified of that election and any SSBP election. Member may make such election without spousal concurrence.

b. Natural Person With Insurable Interest

An election for a natural person with an insurable interest may be made only when there is no eligible spouse or dependent children. As an exception, a person who is unmarried but who has a dependent child may provide coverage for that child under the insurable interest provision rather than an election for child. For a pre-21 Sep 1972 retiree, the Secretary concerned must have received the election by 20 Mar 1974, and for the post-21 Sep 1972 retiree, before the first day of eligibility for retired pay. A member must elect full coverage when electing for a natural person with an insurable interest.

c. Former Spouse or Former Spouse and Children. In the case of a person with a spouse or child, a former spouse election prevents an annuity to that spouse or child (other than a child who is a beneficiary under an election for a former spouse and child, including payment under the active duty death provision (Title 10, U.S.C., section 1448(d)). If there is more than one former spouse, the member shall designate which former spouse is to be provided the annuity.

(1) Upon Retirement. A member who has a former spouse and dependent child when becoming eligible to participate 1 Mar 1986 or later may elect former spouse or former spouse and child coverage, provided the child resulted from the member's marriage to that former spouse. A member with former spouse coverage at the maximum level may also elect SSBP coverage. The annuity for the former spouse is provided under the spouse category. If the former spouse election was effective before 1 Mar 1986, the former spouse annuity was provided under the insurable interest category and child coverage, in conjunction with former spouse coverage, was unavailable. A member participating before 1 Mar 1986, with former spouse coverage may provide annuity for a former spouse and child, if such election is made before 1 Mar 1987, for a member who elected former spouse coverage before 8 Nov 1985, and not later than 13 Nov 1987, for the member who elected former spouse coverage 8 Nov 1985 through 28 Feb 1986. Note: Annuity for the former spouse must first be provided under the spouse category in order to add child coverage.

(2) Following Retirement. A member with spouse or spouse and child coverage may, before 24 Sep 1984, or within 1 year of date of the decree of divorce, dissolution, or annulment, whichever is later, change that election to provide an annuity to a former spouse or to a former spouse and child. If the member elects to provide former spouse coverage at the maximum level, a member may simultaneously elect SSBP for spouse and who changes coverage from spouse to former spouse may drop SSBP. If a member had SBP and SSBP coverage for spouse and the member is changing to former spouse coverage, the level of SSBP may be increased. The former spouse beneficiary may not be the former spouse that member had when he or she became eligible to participate in the Plan. If the SBP election was changed to former spouse coverage and was in effect before 1 Mar 1986, annuity was provided under the insurable interest category and child coverage in conjunction with former spouse coverage was unavailable. A member participating

in the plan before 1 Mar 1986, with former spouse coverage can provide annuity to a former spouse and child if such election is made before 1 Mar 1987, for a member who elected former spouse coverage before 8 Nov 1985, and not later than 13 Nov 1987 for the member who elected former spouse coverage 8 Nov 1985 through 28 Feb 1986. Note: Annuity for the former spouse must first be provided under the spouse category before child coverage may be added. If a member elects coverage for a former spouse who the member acquired after becoming eligible for retired pay, the member and former spouse must have been married at least one year or the former spouse must be the parent of issue by that marriage in order for the former spouse to be an eligible beneficiary. Public Law 99-145 allowed SBP participants who had not elected former spouse coverage to elect former spouse coverage during the period 8 Nov 1985 thru 7 Nov 1986.

(3) Deemed Elections. A member who enters, incident to a proceeding of divorce, dissolution or annulment, into a written agreement to elect to provide an SBP annuity to a former spouse, and such agreement has been incorporated in, ratified or approved, by a court order, or has been filed with the court of appropriate jurisdiction in accordance with applicable state law, or the member is required by a court order to make an SBP election, and then fails or refuses to make such election, the member shall be deemed to have made such election if the Secretary concerned receives a written request from a former spouse. Deemed elections for SSBP coverage shall operate under the same rules for SBP except that no elections may be required by court order. Deemed SSBP elections may only be made in instances where there is a voluntary written agreement to elect made by the member and such agreement is properly incorporated in a court order or filed with the court of appropriate jurisdiction.

(a) The former spouse will provide: a certified copy of the court order, regular on its face, which requires such election, or incorporates, ratifies, or approves the written agreement of the member; a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable state law; or, for a deemed SBP election only, a copy of the court order which requires the SBP election. A court order which requires the member to elect (or to enter into an agreement to elect) SBP for a former spouse or former spouse and child must be issued on or after 14 Nov 1986.

*(b) The request from the former spouse must be received by the Secretary concerned before 1 Oct 1985, or within 1 year of the date of the court order or filing involved, whichever is later. If an election of former spouse coverage was agreed to or ordered by an earlier court order, a subsequent order or modification that merely restates the previous provision and imposes no new obligation on the member does not begin a new 1 year period. A subsequent court order holding a member in contempt of court for failing to fulfill the prior agreement is not the type of court order that can be used to begin a new 1-year period to deem an election.

(c) No election may be deemed to have been made which could never have been made by the member concerned.

(d) If the request is received from a former spouse and the member still has time remaining during the 1-year period in which to make an election, member should not yet be considered to have failed to make the election. Member should be notified within 30 days of receipt of the former spouse's request for a deemed election. The member shall be given 60 days from the date of the notice in which to make a voluntary election.

(e) A qualifying election shall be deemed no later than the last known day during which member could voluntarily make the election, or 60 days after the member had been notified, whichever is earlier.

(f) If a member dies before making an election, a former spouse's request, which is otherwise qualified, shall be honored even if the date of the request is after the date of the member's death.

(g) If a member has more than one former spouse, the first request for a deemed election received with complete documentation shall be the one honored.

d. SSBP. A member may not be ordered or required to elect (or to enter into an agreement to elect) to provide a spouse or former spouse with a supplemental spouse annuity. Except as provided in subparagraph 90205c(3), in no case shall a person be deemed to have made an election to provide a supplemental annuity for a spouse or former spouse of such person.

e. Federal Civil Service Retiree

(1) A member with SBP coverage (or SBP and SSBP coverage) who retires under the civil service retirement program and who waives military retired pay to combine civilian and military service credits and elects survivor

coverage, at any level, under the civil service retirement, has SBP coverage suspended while the waiver is in effect. If the waiver is terminated for any reason, SBP (or SBP and SSBP) coverage resumes concurrent with the resumption of retired pay. The type of coverage and level of participation, as adjusted by any changes in retired pay during the period of waiver, is as first elected. If the retired service member dies while the waiver of military retired pay is in effect, no SBP (or SBP and SSBP) annuity becomes due and payable to either the surviving spouse and/or children.

(2) An election in the SBP with concurrent cancellation of previous RSFPP coverage is without force or effect if retired pay was previously waived for civilian retirement and survivor coverage from the civilian annuity was elected.

(3) A member who elects SBP coverage, including SSBP coverage and who does not waive military retired pay for civil service retirement may have survivor coverage under both retirement plans.

(4) A member may waive retired pay in total to receive VA compensation and retire from civil service. The waiver of full retired pay in favor of VA benefits may also be considered as a waiver of retired pay for the purpose of a civil service retirement. A specific waiver of military retired pay for the civilian retirement is not required. The SBP coverage, including SSBP coverage, is suspended if survivor coverage is elected from the civil service annuity.

(5) Provisions in (1) and (4) above do not apply to a member retired under Title 10, U.S.C., section 1331 or retired due to a combat-incurred disability.

(6) Death of Federal civil service employee before waiver of military retired pay. The survivor of a Federal civil service employee who was awarded retired pay based on any period of military service and who dies before separation from civil service shall receive a survivor annuity computed using military service. The survivor annuity from civil service shall be reduced by any military survivor benefits payable. The survivor may elect not to be covered by this provision which automatically uses military service credit in computing the Federal survivor annuity.

***f. Federal Judges.** Except for participation in Federal civil service survivor annuity programs, SBP coverage does not terminate when a member participates in other survivor benefit plans administered by the Federal Government such as under the Foreign Service or Federal Judges retirement systems.

90206. Combined RSFPP and SBP Coverage
Members participating in RSFPP on or before 21 Sep 1972 could before 20 Mar 1974:

(1) Decline SBP coverage and continue RSFPP, or

(2) Cancel RSFPP in favor of SBP, or

(3) Elect coverage under both plans.

b. The commitment concerning the RSFPP participation must have been made at the time of the SBP election. In the absence of such commitment, coverage under both plans was established and the member was contacted regarding his/her desires on the RSFPP. A member could not cancel the RSFPP participation and at the same time decline SBP coverage. Cancellation of the RSFPP in favor of SBP was both final and complete. A member having RSFPP coverage under two options could not cancel one option and retain the other.

c. When electing coverage under both plans the member could, within certain limitations, designate the amount of coverage under each plan. The total of the annuities could not exceed the gross retired pay entitlement on the effective date of the SBP election. The reduced base amount limits had to be maintained and the original RSFPP base amount could not be increased. A member retiring before 1 Nov 1968, could reduce RSFPP coverage to one-fourth or one-eighth of the gross pay entitlement or reduce RSFPP coverage on date of retirement. A member retiring on or after 1 Nov 1968, and electing SBP may reduce the RSFPP annuity by any amount provided the amount is not less than 12-1/2 percent of the retired pay entitlement on the date SBP elected and the monthly annuity elected was not less than \$25.

d. Cancellation of the RSFPP at the time of election into the SBP did not entitle the member to a refund of the previous RSFPP cost. Any delinquent costs under the RSFPP on the date of conversion to SBP continued to exist, with interest, until paid.

90207. Changes in Election and Coverage

a. Later-Acquired Spouse and/or Child.

This election must be received within 1 year of the event.

(1) A member who is participating with spouse or spouse and child coverage and who does not have an eligible spouse beneficiary may upon remarriage: resume coverage, increase the level of coverage up to and including full retired pay, or elect not to have spouse coverage resumed. A member who is participating with maximum

spouse coverage but who is not a participant in the SSBP may elect SSBP upon remarriage. The SSBP election is irrevocable and shall be made within one year after the remarriage.

(a) The member may not add child coverage by virtue of this remarriage alone if child coverage was previously bypassed.

(b) The level of SBP coverage may not be reduced nor may child coverage be eliminated. The SSBP level of coverage may be increased upon remarriage.

(c) SBP elections become effective when new spouse becomes an eligible beneficiary, and any increase in cost, plus interest, has been paid. Where level of SBP coverage was increased, the member must pay the difference between the costs incurred and the costs that would have been incurred had the higher level of coverage been elected originally, plus interest. Interest is compounded monthly using a factor equal to the 12th root of 1 plus the annual interest rate used by the DoD Board of Actuaries to calculate the retirement accrual costs. The current compounding factor is 1.00534. Interest is to be compounded monthly on the accumulated difference existing prior to any computation month. If payment of cost plus interest is not completed before spouse becomes an eligible beneficiary, the election becomes null and void and a refund of cost and interest and reinstatement of original election coverage occurs. Cost plus interest will be paid to member's estate should the member die before refund is completed.

(d) If a member has spouse or spouse and child coverage and elects not to resume SBP participation for the spouse, the spouse is notified and any SSBP coverage is terminated. An election to terminate spouse coverage is irrevocable. If the member elects to increase the level of spouse coverage to an amount less than full retired pay, the spouse is notified.

(2) If, on 21 Sep 1973, for the pre-21 Sep 1972 retiree, or on date of retirement, for the post-21 Sep 1972 retiree, the member:

(a) Has no eligible beneficiaries and declines to participate, the declination does not prohibit the later election for spouse and/or children; or

(b) Has no eligible spouse and elected for children only, he or she may within 1 year after marriage or remarriage include the spouse with coverage previously elected for the children.

(c) Has no eligible children and

elected for spouse only, he or she may, within 1 year of acquisition of children, include the children with coverage previously elected for the spouse.

(d) Elects coverage for a former spouse or former spouse and children, or elects coverage for a natural person with an insurable interest, the member may later change the election to spouse and/or children. The member is not required to change the election to spouse and/or children; however, if such a change is made, it permanently terminates the eligibility of the former spouse or the natural person with insurable interest. It is not necessary that maximum level coverage be elected for the spouse and/or children. See paragraph 90207c for additional information concerning changes in former spouse coverage.

b. Change From Spouse or Spouse and Children. A member who elected spouse or spouse and child coverage may terminate such election and provide an SBP annuity for a former spouse or former spouse and child, provided the child resulted from the member's marriage to that former spouse. A member who elects to provide former spouse coverage at the maximum level may elect SSBP coverage. If the member is married when the former spouse election is made, that spouse is notified (see subparagraph 90205a(7)). A former spouse may request that an election be deemed by the Secretary concerned.

(1) The Secretary concerned shall notify the former spouse of any changes in election.

(2) A member who, incident to proceeding of divorce, dissolution, or annulment, is required by a court order to elect to provide an annuity to a former spouse or to a former spouse and child or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement, may not change such election unless:

(a) The election is required by a court order or an agreement which has been incorporated in or ratified or approved by a court order and the member furnishes the Secretary concerned with a certified copy of a court order, regular on its face, and modifies all previous court orders relating to such election, or the agreement to make such election so as to permit the member to change the election. The member must certify to the Secretary concerned that the court order is valid and in effect.

(b) In the case of a written agreement that has not been incorporated or ratified or approved by a court order, the member

furnishes to the Secretary concerned a statement, in a manner prescribed by the Secretary, signed by the member and the former spouse which evidences the former spouse's agreement to an election change. The member must certify that the statement is current and in effect.

c. Change to Former Spouse Election and Coverage. A member may change an election for former spouse coverage under the insurable interest category to former spouse coverage under the spouse category during the period 8 Nov 1985 through 7 Nov 1986. A member may add child coverage to former spouse coverage provided the child was the result of the member's marriage to that former spouse and if member is providing coverage for the former spouse under the spouse category. These election changes apply to elections effective before 1 Mar 1986.

d. Changed Retirement Eligibility. If a member elects RCSBP coverage and subsequently becomes eligible for retirement under another law thereby losing eligibility under Title 10, U.S.C., Chapter 67, the RCSBP election remains effective until the member actually retires. A member may then make a new election as any other retiring member.

e. Open Enrollment Periods

(1) Public Law 97-35 allowed certain members to enroll in the SBP, to increase a reduced level of coverage, or to add spouse coverage to child coverage. The open enrollment period was 1 Oct 1981 through 30 Sep 1982. See paragraph 90209. Public Law 97-252 allowed certain Reservists to participate in an open enrollment period 1 Oct 1982 through 30 Sep 1983.

(2) See paragraphs 90205c(1), (2) and (3) for open periods under Public Laws 98-94, 98-525, 99-145, and 99-661 involving elections for a former spouse. Members who elected SBP (or RCSBP) 19 Oct 1984 through 8 Nov 1985, could elect to withdraw 8 Nov 1985 through 7 Nov 1986, with a refund of cost plus interest.

(3) Public Law 100-180 provided an open season withdrawal. A member with spouse or spouse and child coverage who remarried before 1 Mar 1986, and at a time when that person was a participant in SBP, could, with the spouse's consent, withdraw from the Plan. The withdrawal period was 3 Mar 1988 through 2 Mar 1989. Cost and coverage stop on the first day of the month following receipt of the withdrawal request. There is no refund of SBP costs.

(4) Public Laws 101-189 and 101-510 provide an open season 1 Apr 1992 through 31 Mar 1993. A member who is not participating in SBP

can elect into the SBP program. A member who is electing SBP coverage for spouse or former spouse at the maximum level during open season can elect SSBP. A member may add spouse coverage or increase the base amount of coverage during open season. A member who is already participating in SBP with maximum coverage for a spouse or former spouse may elect SSBP during open season.

f. Mental Incompetency. If a mentally incompetent person is later determined to be mentally competent, the member may, within 180 days after such determination, change or revoke the SBP, or SBP and SSBP election made on the member's behalf. The change or revocation shall be effective on the date of the member's request.

g. Correction of Administrative Error. The Secretary concerned or designee, may correct any election or any change or revocation of an election when the Secretary considers it necessary to correct an administrative error. See paragraph 90103g.

90208. Discontinuance of Participation

a. Any person who elects to participate in the plan with a service-connected disability rated by the Department of Veterans Affairs as totally disabling and has been so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, at least 5 years from the date of last discharge or release from active duty) may request to discontinue participation in the plan by submitting a request to the Secretary concerned. The initial date for determining the 5- or 10-year period is the effective date of the VA rating of total disability. Validation must be obtained from the Department of Veterans Affairs if not available from the individual.

(1) Request for discontinuance must be with the written consent of the beneficiary or beneficiaries under the plan. Should that beneficiary or beneficiaries be a dependent child or children, written consent may be accepted from a parent, stepparent, foster parent, guardian, or an individual appointed by a court of competent jurisdiction.

(2) The Secretary concerned shall furnish to each person requesting discontinuance, a written statement of the advantages of participating and the possible disadvantages of discontinuing participation or the provisions of Title 10, U.S.C., section 1452(g).

(3) A person may withdraw the discontinuance request within 30 days of submission to the Secretary concerned.

(4) Participation in the plan and cost of

SBP and SSBP coverage is discontinued on the first day of the month following receipt of request by the Secretary concerned. This provision of the law is effective 1 Dec 1980; therefore, the earliest day on which SBP cost may be discontinued is 1 Jan 1981.

(5) If a member dies after the date a request for withdrawal has been received by the Secretary concerned, but before the effective date of that request, the beneficiary is entitled to the annuity.

b. Upon the death of a person who has discontinued participation in the plan according to this section, a refund of SBP and any SSBP amounts deducted from retired or retainer pay without interest shall be made to the widow or widower.

c. Any person who has discontinued participation in the plan may again elect to participate if: (a) the Department of Veterans Affairs reduces such disability rating to less than total; and (b) such person applies within 1 year to participate in the plan and includes the required information determined by the Secretary concerned.

(1) Participation in the plan and reduction in pay is effective the first day of the month following receipt of application to the Secretary concerned on DD Form 1883, Survivor Benefit Plan Election Certificate. Documentation attesting to the less than total disability rating must accompany the application.

(2) If the member who applies for resumption of participation dies prior to the effective date, the beneficiary is entitled to an annuity on the date the election would have been effective.

(3) Resumption of participation shall be limited to the type and level of coverage initially elected allowing for beneficiary changes as otherwise provided for in this directive.

90209. Open Enrollment Periods

a. Eligible members from each service were notified of Public Law 97-35, 13 Aug 1981, which provided an open enrollment period for SBP from 1 Oct 1981 through 30 Sep 1982. Public Law 97-252 authorized an open enrollment period for certain reservists 1 Oct 1982 through 30 Sep 1983.

(1) An eligible member is a member or former member of the uniformed services who was entitled to retired or retainer pay on or before 13 Aug 1981. If a member discontinued participation in the SBP program under provisions of Public Law 96-102 for the totally disabled before 13 Aug 1981,

that member may re-enroll during the open enrollment period or resume participation under paragraph 90208c. Service Secretaries are permitted to make elections on behalf of mentally incompetent members. A member who does not have an eligible beneficiary during the open enrollment period may not elect into SBP later except under paragraphs 90205a(4) and (5). Also, a member who previously did not have an eligible beneficiary to make an election for, may be able to elect coverage for that beneficiary under paragraphs 90205a(4) and (5).

(2) An eligible member may elect to:

(a) Enroll in the SBP if not presently participating (an initial election for former spouse coverage could be made from 8 Sep 1982 through 30 Sep 1982);

(b) Change the current level of coverage to a higher level; and, or

(c) Change the current children only coverage to include coverage for spouse. Election information can be accepted in writing rather than on the approved form.

(3) A member may only elect or change SBP once during the open enrollment period.

(4) The election is effective when received by the Secretary concerned. The postmark of the envelope may be used when beneficial to the member or survivor. An annuity is not payable under the open enrollment election for a period of 2 years. The 2-year waiting or penalty period begins on the effective date of the open enrollment election and ends 2 years from that date.

(a) If a member dies before the end of the 2-year waiting period:

1. The open enrollment election is void and costs attributed to that election are refunded to or on behalf of the beneficiary(ies) designated in the open enrollment election. If the member had no prior coverage and elected for spouse and children, the total refund is made to the eligible spouse beneficiary. If the eligible spouse beneficiary is no longer living, costs are refunded without interest, to the remaining eligible beneficiary(ies). If the member had an election in effect before the open enrollment election, the cost is recalculated under the earlier election and deducted from the refund of the costs due the eligible beneficiary(ies) for the open enrollment election.

2. An annuity is established to the eligible beneficiary(ies) under the terms of the earlier election.

3. If a member makes an

initial election to provide spouse coverage during the open enrollment period, changes that election under paragraph 90207b during the 2-year waiting period, and dies before the end of the 2-year waiting period, no annuity is payable to the former spouse. Costs attributed to the open enrollment election are refunded to or on behalf of the beneficiary(ies) of that election; costs attributed to the changed election are refunded to the former spouse. If the member had an election in effect before the open enrollment election, the cost is recalculated under the earlier election and deducted from the refund of the cost due the former spouse.

(b) If the beneficiary dies during the 2-year period, cost is suspended on the first day of the month after death. If the member later acquires the same type of beneficiary, but during the 2-year waiting period, cost is resumed for the remainder of the 2-year period. If the member acquires the beneficiary after the 2-year waiting period, cost is resumed when the beneficiary becomes eligible for the annuity. See paragraphs 90301 a and b.

(5) A member who wishes to cancel RSFPP coverage to coincide with the election of SBP during the open enrollment period must initiate separate action to withdraw from RSFPP under paragraph 80211.

(6) The services are not required to notify the beneficiary of a change in the member's election.

(7) SBP cost for an open enrollment election is effective on the first day of the month after receipt of the election by the Secretary concerned at the appropriate DFAS Center), except that costs for an initial election of former spouse coverage are effective 1 Feb 1983. See table 9-4-2.

(8) If a member increases the base amount (or level of coverage), the cost is recalculated on the existing cost factor(s). If the member makes an initial election which includes children or adds spouse coverage, cost is computed using cost factors that are based on ages on the date of election.

(9) SBP costs are not refunded to a member who is discharged from the TDRL.

(10) The cost for spouse coverage paid during the 2-year waiting period is included in any cost refund that results from a DIC award.

b. Public Law 101-189, amended by Public Law 101-510, provides an open enrollment period from 1 Apr 1992 through 31 Mar 1993. A member may only make one open season election. A

member with suspended spouse or former spouse coverage may make any election otherwise allowable even if cost as a result of the open season election is immediately in a suspended status.

(1) Non-participants. A member or former member of the Uniformed Services who on 31 Mar 1992, is not a participant in the SBP and is entitled to retired pay may elect SBP during the open enrollment period. Members may make an election for spouse, former spouse, spouse/former spouse and child, child only, or a natural person with an insurable interest. If the member elects spouse or former spouse coverage at the maximum level, the member may elect Supplemental SBP.

(2) Existing participants

(a) A member with reduced SBP coverage may elect to increase the base amount of coverage.

(b) A member may add spouse or former spouse coverage to child coverage. If adding spouse coverage, existing child coverage may not be dropped. An election for former spouse coverage terminates any previous coverage. If adding a former spouse, a member may drop coverage for children. A member may cover former spouse and children, however, the only children eligible are the children of the member-former spouse marriage. Thus, when a member with child coverage elects former spouse and child coverage, any children not the result of the member-former spouse marriage become ineligible and coverage for such children ceases.

(c) A member may not change from spouse to former spouse coverage even if spouse cost and coverage are currently suspended. A member may not change from former spouse to spouse coverage. A member with coverage for a natural person with an insurable interest (including a former spouse covered under the insurable interest category) may not change that election.

(d) A member with spouse or former spouse coverage at the maximum level may elect Supplemental SBP.

(3) No election may be deemed under the provisions of the open enrollment period.

(4) A member who makes a valid election for former spouse during the open enrollment period and who is otherwise under a qualified court order to elect SBP coverage for a former spouse will be subsequently subject to the provisions of that court order.

(5) An open enrollment election is effective for cost purposes on the first day of the month after the election is received by the Secretary concerned, but not earlier than 1 Apr 1992. If the date received is prejudicial to the member, the postmark date will be considered the date the election was received.

(6) The cost for an open season election will be established as though the member was first becoming a participant in SBP at the time of election.

(7) In addition to the SBP cost for an open enrollment election for spouse or former spouse, there will be an additional cost charged on the basis of the number of years the member has been retired. The number of years will be determined from the date of initial retirement through the date the election is effective. Months and days less than a full year are ignored. The additional cost percentage will apply to the full base amount or, if the member was previously providing reduced coverage for a spouse or former spouse, to the increase in the base amount over the annuity base amount that previously existed. The premium addition will not apply to any member making an open season election who is currently paying RSFPP cost for spouse coverage or, who is electing SBP coverage for spouse and who previously participated in SBP but who later withdrew from participation under the provision for totally disabled members. The additional cost percentage charged for an open season election is not refunded when recalculating SBP cost due to DIC award.

* (8) An open season election becomes void if the member dies before the end of the 2-year survival period beginning on the cost-effective date (subparagraph 90209b(5)), with the exception of members who make an open enrollment election for a spouse and that spouse was entitled before 1 Nov 1990 to receive Dependency and Indemnity Compensation based on a previous marriage to another member. If an open season election is void, the member's election would revert to any previously established coverage.

(9) Any cost for the voided open enrollment election will be refunded to the member's beneficiary under the open enrollment election. If the beneficiary predeceases the member, there is no refund of cost.